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**Cc:** "Willard Potter" [otto@demaximis.com]; tephania Vaughn/R2/USEPA/US@EPA; "Jr. William Hyatt" [william.hyatt@klgates.com]; Jr. William Hyatt" [william.hyatt@klgates.com]  
**From:** "Robert Law"  
**Sent:** Wed 10/17/2012 6:14:46 PM  
**Subject:** Re: FW: Facilitate the Permit or Determination of the Substantive Requirements/Permit Equivalent of the 10.9 River Mile  
10/17/2012 2:05 PM >>">william.hyatt@klgates.com> 10/17/2012 2:05 PM >>

Jay:

Thank you.

R/  
Rob

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Fax: 908-735-2132>>> "Hyatt, Jr., William" 10/17/2012 2:05 PM >>">william.hyatt@klgates.com> 10/17/2012 2:05 PM >>

From: Nickerson, Jay [mailto:Jay.Nickerson@dep.state.nj.us]  
Sent: Wednesday, October 17, 2012 1:39 PM  
To: Stephanie Vaughn/R2/USEPA/US (Vaughn.Stephanie@epamail.epa.gov); Hyatt, Jr., William; Ray Basso/R2/USEPA/US (Basso.Ray@epamail.epa.gov)  
Cc: Bergman, Erica; MacGregor, Janine; Hayton, Anne  
Subject: Facilitate the Permit or Determination of the Substantive Requirements/Permit Equivalent of the 10.9 River Mile

The following is prepared by the New Jersey Department of Environmental Protection (NJDEP) to help facilitate the permit or determination of the substantive requirements/Permit Equivalent of the 10.9 River Mile (RM) section of the Passaic River. This email addresses, in part, remedial concerns highlighted in K & L Gates 9/7/12 letter and the USEPA Diamond Alkali Site - LPRSA letter dated 9-25-12.

Air Permit - Contact Person: Francis Steitz 609-633-8220, Bureau of Air Permits.

Treatment Facilities - A NJDEP air permit is required for treating/processing the dredge material at an offsite - treatment facility. Some points to consider are as follows:

- Offsite treatment facilities - Cashmans, Clean Earth and Don John are regulated under NJAC 7:27 and 8. Due to possible

significant public interest, a public comment and hearing may be necessary. If one of these facilities processes the dredge material,

they will need to submit a modification to their existing NJDEP Permit to address the new material that will be processed. For a time

critical project, the applicant must submit an administratively complete application and be able to quantify and verify all the potential

emissions from the added process and raw material. Also, an air modeling risk analysis will need to be completed. This is site specific

as the proximity to sensitive receptors is a key factor.

The treatment facility should also be proactive by first obtaining an air permit approval prior to acquiring the contract and in communicating to the local municipality and community about the proposed plan.

These facilities should set up a pre-application meeting as soon as possible with the Bureau of Air Permitting, since this is a time critical project.

- Dredging Operations: A determination is needed from the Division of Air and Hazardous Materials Enforcement and Bureau of Air Permits to determine the substantive air permit requirements of the dredging operations. Air Monitoring & controls: The Cooperating Parties Group must demonstrate what steps will be taken to insure that potential air emissions will not impact critical receptors (residential areas/public parks), e.g. perimeter air monitoring around dredging operations.

Discharge to Surface Water Permit - Contact: Susan Rosenwinkel, Water Discharge Permits, 609-292-480.

At this time it cannot be determined whether a discharge to surface water permit is required which is based on the determination on how the sediment/decanted water will be handled during the remedial activities. If the sediment water is decanted back into the Passaic River, then a discharge to surface water permit is needed.

Land-Use Permits - Contact: Suzanne Dietrick, Office of Dredging and Sediment Technology, 609-292-9203.

On July 21, 2011 the Office of Dredging & Sediment Technology (ODST) issued various Land Use permit

equivalencies for the Passaic River Phase I Removal Action Enclosure Area USEPA Directed CERCLA Action.

The same requirements apply to the present River Mile 10.9 Action proposed by the CPG. Therefore, in accordance with ARAR's, the following Land Use authorizations are needed:

1. Waterfront Development
2. Flood Hazard Area Permit Equivalencies; and
3. Water Quality Certification.

In addition, any off-site treatment, storage, handling or dewatering facility located within the regulated Waterfront Development area [below the mean high water level (MHWL) and within 500' upland of the MHWL of any tidal water] would require the same authorizations in the form of permits. Note - they would not qualify for permit equivalencies unless they were located within the designated Superfund site boundaries and the applicant were acting directly under a federal directive.

In addition, any off-site facility proposing to handle, store or treat dredged materials must apply for and receive an Operating Dredged Material Use Facility Acceptable Use Determination from ODST prior to acceptance of dredged materials. Additional bench scale and treatability studies will need to be performed to evaluate the treatment technology (stabilization) as discussed in more detail in the NJDEP's Basis of Design Report Comments.

#### ARAR's & Rules on Coastal Zone Management (CZM Rules)

Dredging and related on-site activities proposed at River Mile 10.9, pursuant to ARAR's are subject to the same applicable State requirements as the Phase One Project and therefore must demonstrate compliance with New Jersey's N.J.A.C. 7:7E- et. seq. via a Waterfront Development Permit Equivalency. The CZM Rules also require address of Tidelands ownership. No information has been provided with regard to Tidelands ownership of the subject dredging area. In addition, this State owned Riparian area is proposed to be modified via dredging and capping activities.

Table 2-3 lists various Land Use Rules including the Flood Hazard Area Control Act, Tidelands Act and New Jersey Waterfront Development Law, however this table does not call out the Coastal Zone Management Rules as applicable as noted for other regulations such as the Water Quality Certification (WQC). It should also be noted that WQC's are issued by NJDEP as part of the Waterfront Development Permit Equivalency process and therefore in order to obtain the WQC the State must issue a Permit Eq.

If you have any questions, please contact me as provided below.

Jay Nickerson

Bureau of Case Management

Site Remediation Program

NJDEP

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